

PS1470.01 HISTORIC PRESERVATION OF BUREAU PROPERTIES



Program Statement

OPI: ADM
NUMBER: 1470.01
DATE: March 5, 1997
SUBJECT: Historic Preservation of
Bureau Properties

1. PURPOSE AND SCOPE. To establish procedures for identifying and preserving all Bureau properties that may meet the criteria for eligibility to the National Register of Historic Places, under the National Historic Preservation Act (NHPA) of 1966, as amended (16 U.S.C. 470).

Provisions of this Act establishes the Bureau's responsibility for preserving Bureau owned or controlled historic properties and to make use, to the maximum extent feasible, of historic properties available to the agency (Executive Order 13006, May 21, 1996).

Finally, it establishes an identification and preservation program to evaluate and nominate properties to the National Register of Historic Places and to protect historic properties.

2. PROGRAM OBJECTIVES. The expected results of the program are:

a. Historic properties under Bureau jurisdiction or control, will be identified, evaluated, and nominated to the National Register of Historic Places.

b. Eligible properties will be managed and maintained by the regional office to preserve their historic, archeological, architectural, and cultural values.

c. The preservation of properties not under the Bureau's jurisdiction, but subject to be potentially affected, will be given full consideration in planning.

d. The Bureau's preservation related activities will be carried out in consultation with other federal, state, and local agencies, Native Americans, Native Hawaiian organizations carrying out historic preservation planning activities, and with the private sector and will be coordinated by Central Office, Facilities Programs, with assistance from the regional offices.

e. The Bureau's procedures will comply with Section 106, 110, 111 and 402 of the NHPA of 1966, as amended, the Archaeological Resources Protection Act of 1979, the American Indian Religious Freedom Act of 1972, and the Native American Graves and Repatriations Act of 1993.

3. DIRECTIVES AFFECTED

a. Directives Rescinded. None

b. Directives Referenced

PS 1227.04 Archival and Historical Programs (10/08/96)

TRM 021.01 Facilities Development Technical Reference
Manual (04/01/96)

16 U.S.C. 470

36 CFR 800

Executive Order 13006 (May 21, 1996)

4. STANDARDS REFERENCED. None

5. NATIONAL HISTORIC PRESERVATION ACT. The National Historic Preservation Policy Act (NHPA) of 1966, as amended (16 U.S.C. 470), is the Nation's central historic preservation law. It establishes the legal and administrative context within which local historic preservation commissions relate and participate in, the national historic preservation program. The Act was passed at a time when Americans were becoming increasingly aware of the damage being done to their heritage by modern development. Since its passage, the Act has been strengthened and revised several times. It is designed to encourage preservation and wise use of our historic resources.

The Act does several important things:

a. National Policy. The Act sets forth the policy of the U.S. Government regarding historic preservation.

The intent of the policy is to promote conditions in which historic properties can be preserved in harmony with modern society and fulfill modern society's needs.

b. The National Register. The Act authorizes the Department of the Interior to establish, maintain, and expand the National Register of Historic Places.

The National Park Service maintains the Register; it is a computerized listing of properties that have been nominated and accepted as having historic, architectural, archeological, engineering or cultural significance, at the national, state, or local level. The Register is growing steadily as more properties are identified and nominated each year.

c. State Historic Preservation Officers (SHPO). The Act establishes the responsibilities of SHPO's, or state officials who administer the national historic preservation program at the state level.

Each SHPO is responsible for developing a statewide plan for preservation, surveying to identify historic properties, nominating properties to the National Register, providing technical assistance to federal, state and local agencies and the public, participating in the review of Federal undertakings that affect historic properties, helping local governments become certified for program participation, and other activities.

d. Advisory Council on Historic Preservation. The Act creates the Advisory Council on Historic Preservation, an independent Federal agency responsible for advising the President and Congress on historic preservation matters, and reviewing and commenting on agency actions that may affect historic properties. The Council's role in the review actions under Section 106 is to encourage agencies to consider, and, where feasible, adopt measures to preserve historic properties that would otherwise be damaged or destroyed.

The Council's regulations, entitled "Protection of Historic Properties" (36 CFR 800), govern the Section 106 process.

The Council:

- Does not have the authority to require agencies to halt or abandon projects affecting historic properties.

The Council's regulations:

- Emphasize consultation among responsible Federal agencies, the SHPO, and other interested parties, including local governments, to identify and, if possible, to agree upon ways to protect the properties in question.

e. Section 106 Requirements. Section 106 of the NHPA requires:

- Federal agencies consider effects their actions, and actions they may assist, permit, or license, may have on historic properties, and
- Allows the Advisory Council on Historic Preservation established under Title II of the Act, a reasonable opportunity to comment on such actions.

Section 106 applies to properties that have been listed in the National Register of Historic Places, determined to be eligible for inclusion in the National Register or may be eligible but have not yet been evaluated.

If a property has not been nominated to the National Register or determined eligible for inclusion, it is the responsibility of the federal agency involved to ascertain its eligibility under Section 110 by following the procedures outlined in Council and National Park Service regulations.

f. Section 106 Process. The Council's regulations consist of five basic steps.

(1) Identification and Evaluation. The federal agency conducting a project or action is responsible to:

- Assess the adequacy of existing survey data, inventories, and other information on the area's historic properties,
- Conduct further studies as needed, and
- Consult with the SHPO, local governments, and other interested parties and document the results of the identification effort.

For properties that may be eligible for the National Register but have not been listed or determined eligible, the agency consults with the SHPO and, if required, the Keeper of the National Register, to determine eligibility or ineligibility.

(2) Effect Determination. If properties in, or eligible for, the Register exist in the area that may be affected by the action, the agency consults with the SHPO to determine what effect the action will have on them.

The agency may find that the action will have no effect on historic properties, no adverse effect on such properties, or adverse effects on them. Local governments and interested members of the public shall be informed of these findings. The regulations provide specific criteria for determining whether an action will have an effect and whether the effect will be adverse.

Generally, actions are held to be adverse if:

- It may alter the characteristics that make a property eligible for the National Register;
- Is held to have an effect, and
- The alterations may be detrimental to those characteristics, including relevant qualities of the property's environment or use.

With respect to any undertaking subject to Section 106 which adversely affects any property included in or eligible for inclusion in the National Register, and for which a Federal

agency has not entered into an agreement with the Council, the head of such agency shall document any decision made pursuant to Section 106.

The head of such agency (Attorney General) may not delegate his or her responsibilities to such section. When a Section 106 Memorandum of Agreement (MOA) has been executed with respect to an undertaking, such memorandum shall govern the undertaking and all of its parts.

(3) Consultation. If the action will have an adverse effect, the agency consults with the SHPO, other interested persons, and as required the Advisory Council, to seek agreement on ways to avoid or reduce the effects.

Local governments, Native American organizations, local property owners and the public are given the opportunity to express their views. If they so request, local governments should be invited to participate in consultation regarding the effects on historic properties within their jurisdictions.

If an agreement is reached, an MOA is drawn up and signed. If an agreement cannot be reached, the Council's formal comments are requested.

(4) Agreement and Council Comment. The Council's acceptance of an MOA and implementation of its terms by, or at the direction of, the federal agency satisfies the requirement of Section 106 that the Council be "given a reasonable opportunity to comment" also demonstrates that the agency has "taken into account" the effects of the action. If no agreement is reached, the comments of the Council are sent to the head of the agency.

(5) Proceeding. Having obtained the Council's comments, the agency either carries out the terms of the MOA or considers the formal comments in making its final decisions about whether and how to proceed with the action.

g. Section 110 Requirements (16 U.S.C. 470h-2). The heads of all Federal agencies assume responsibility for the preservation of historic properties which are owned or controlled by that agency.

Prior to acquiring, constructing, or leasing buildings for purposes of carrying out agency responsibilities, each Federal agency may use, to the maximum extent feasible, historic properties available to the agency.

Each agency shall undertake, consistent with the preservation of such properties and the mission of the agency and the professional standards established pursuant to section 101(g), any preservation, as may be necessary to carry out this section.

6. RESPONSIBILITIES. The Act directs Federal agencies to name Agency Preservation Officers (the designated DOJ Historic Preservation Officer is in the Justice Management Division, Facilities and Administrative Services Staff) to:

- Coordinate historic preservation activities,
- Seek ways to carry out their activities in accordance with the purposes of the Act,
- Identify historic properties under their jurisdiction,
- Consider such properties when planning actions might affect them,
- Give the Advisory Council an opportunity to comment on such actions, and
- Document historic properties that cannot be preserved.

Each Regional Director shall designate a preservation officer, who shall coordinate all efforts on the local level for its respective institutions, and report all findings to the Bureau Central Office Preservation Officer (located in Facilities Programs).

Regional Offices shall implement the program for the identification, evaluation, and nomination to the National Register of Historic Places, and protection of historic properties.

- Consistent with the Bureau's mission and mandates, all Regional Offices shall carry out programs and projects in accordance with the purposes of the Act and give consideration to programs and projects which will further the purposes of the Act.
- Preservation activities may be included as eligible project costs under this Act including amounts the Bureau pays to any state to be used in carrying out Bureau preservation responsibilities under this Act.

Reasonable costs may be charged to federal licensees and permits as condition to the issuance of such license or permit.

7. EXEMPTION. In the event of life-threatening or "Act of God" emergencies (riots, hurricanes, tornadoes, floods, fire, etc.,) the mission of the Bureau shall take precedence over the National Historic Preservation Act.

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